



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2011

Ms. Cecilia Gamez
Crime Records Bureau
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2011-08787

Dear Ms. Gamez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 421408.

The McAllen Police Department (the "department") received a request for the incident reports pertaining to two specified incidents involving the requestor's client. You claim the submitted incident reports are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You indicate the submitted incident reports are confidential under section 58.007.¹ Incident report number 2008-00019597 involves an eighteen-year-old individual arrested for driving under the influence. Thus, report number 2008-00019597 does not involve a child for purposes of section 58.007 as a suspect or offender. Therefore, we conclude report number 2008-00019597 is not confidential under section 58.007(c) of the Family Code, and the department may not withhold that report under section 552.101 of the Government Code. Incident report number 2006-00066883, however, involves fifteen-year-old and sixteen-year-old individuals suspected of or arrested for drug possession

¹Although you cite to section 58.106 of the Family Code, we note section 58.007 is the proper exception for your claim.

and evading arrest. Thus, we find report number 2006-00066883 involves juvenile delinquent conduct and is subject to section 58.007(c). *See id.* § 51.03(a) (defining juvenile “delinquent conduct” for the purposes of section 58.007).

We note the requestor is an attorney representing one of the juvenile arrestees listed in report number 2006-00066883. As such, the department may not use section 58.007(c) to withhold that information from this requestor. *Id.* § 58.007(e). Section 58.007(j)(2), however, states the department must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2). You assert report number 2006-00066883 is excepted under section 552.108 of the Government Code. Therefore, we will address this claim, along with your claim under section 552.108 for report number 2008-00019597.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 2006-00066883 and 2008-00019597 pertain to pending criminal investigations. We note, however, report number 2006-00066883 involves alleged Class B misdemeanor charges that occurred in 2006 and report number 2008-00019597 involves an alleged Class C misdemeanor charge that occurred in 2008. The statute of limitations for these misdemeanor offenses is two years. *See* Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period). More than two years have elapsed since the events giving rise to the investigations in report numbers 2006-00066883 and 2008-00019597, and you have not informed this office any criminal charges were filed within the limitations periods. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Therefore, the department has failed to demonstrate the applicability of section 552.108(a)(1) to report numbers 2006-00066883 and 2008-00019597. Consequently, the department may not withhold any part of report numbers 2006-00066883 and 2008-00019597 under section 552.108(a)(1) of the Government Code.

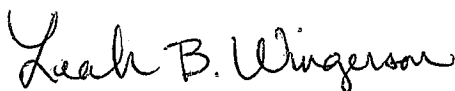
Section 58.007(j)(1), however, states that, before information is released under section 58.007(e), a custodian of records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child. Fam. Code § 58.007(j)(1). Incident report number 2006-00066883 includes identifying information of a juvenile suspect and juvenile offenders. Although the requestor is an attorney representing one of the juvenile offenders listed in this report, the requestor is not a legal representative of the other juvenile offenders and suspect listed in this report. Thus, the department must withhold the identifying information we have marked of the juvenile suspect and offenders that are not the requestor’s client listed in incident report number 2006-00066883 under

section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. As you have not claimed any other exceptions to disclosure, the department must release the remaining information.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 421408

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The department must again seek a decision from this office if it receives a request for this information from a different requestor. Furthermore, we note the information being released includes the requestor's client's license plate number, which is generally confidential under section 552.130 of the Government Code. Because this exception was enacted to protect a person's privacy, the requestor has a right of access to his client's private information under section 552.023(a) of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests).